

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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IN RE: Fosamax Products Liability :
Litigation

: 1:06-md-1789 (JFK)

Order

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This Document Relates to: All Actions :
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JOHN F. KEENAN, United States District Judge:

The Plaintiff's Steering Committee ("PSC") has requested an evidentiary hearing in advance of oral argument on the class certification motions that are currently pending before the Court. For the reasons discussed below, the PSC's request is DENIED.

In determining whether to certify a class, a court must resolve any factual disputes relevant to each requirement of Federal Rule of Civil Procedure 23. In re Initial Public Offering Securities Litigation, 471 F.3d 24, 41 (2d Cir. 2006). In connection with the instant class certification motion, the parties have created and the Court has reviewed an extensive evidentiary record. This record consists of the expert affidavits of plaintiff's dental experts, Robert E. Marx, D.D.S. and Alistair N. Goss, D.D.Sc; plaintiff's claims administration expert Paul Mulholland, C.P.A., C.V.A.; defendant's medical expert, John Bilezikian, M.D.; defendant's expert Jeri W. Nieves, PH.D., an epidemiologist who specializes in osteoporosis;

defendant's oral and maxillofacial expert Robert S. Glickman, D.M.D.; and defendant's chemistry expert, Paul A. Bartlett. The parties have also submitted excerpts from the deposition transcripts of several of these experts; the interrogatory responses, deposition transcripts and plaintiff profile forms ("PPF's") of the three putative class representatives, Mr. Trent Nichols, Jr., M.D., Ms. Aline Trahan, and Ms. Greta V. Murphy; an August 2004 post-marketing safety review from the FDA's Office of Drug Safety; and an FDA report showing the number of cases in which doctors reported adverse drug experiences associated with Fosamax in 1996. The parties have also brought to the Court's attention over forty articles and chapters from the oral and maxillofacial, medical and dental scientific literature discussing osteonecrosis of the jaw ("ONJ") and its causes, diagnosis, treatment and relationship to oral bisphosphonates such as Fosamax.

This record provides a sufficient factual basis to determine whether plaintiffs' motions meet Rule 23's requirements and an evidentiary hearing will not be necessary. Accordingly, the PSC's request is denied.

SO ORDERED.

Dated: October 31, 2007

A handwritten signature in cursive script, reading "John F. Keenan", written over a horizontal line.

JOHN F. KEENAN

United States District Judge